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GA Resolution for Pal. Statehood Lacks Legal Authority

The United Nations General Assembly Resolution for limited Palestinian statehood lacks legal authority. Here is why.

Contact Editor Eli E. Hertz, 02/12/12 19:55



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A host of resolutions passed annually by the General Assembly are not legally binding documents by any measure.

One needs only to read Article 10 of the UN Charter:

"The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters" [italics by author].

Professor, Judge Schwebel, the former president of the International Court of Justice, has written that:

"The General Assembly of the United Nations can only, in principle, issue 'recommendations' which are not of a binding character, according to Article 10 of the Charter of the United Nations." [1]

Schwebel also cites the (1950) opinion of Judge, Sir Hersch Lauterpacht, a former member judge of the International Court of Justice, who declared that:

"The General Assembly has no legal power to legislate or bind its members by way of recommendation." Yet, another former ICJ judge, Sir Gerald Fitzmaurice, has been just as resolute in rejecting what he labeled the "illusion" that a General Assembly resolution can have "legislative effect." [2]

Academics and renowned international law experts also agree. Professor Stone illuminates this subject by pointing out:

"In his book 'The Normative Role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Relations', Professor Gaetano Arangio-Ruiz [3] is led to conclude that the General Assembly lacks legal authority either to enact or to 'declare' or 'determine' or 'interpret' international law so as legally to bind states by such acts, whether these states be members of the United Nations or not, and whether these states voted for or against or abstained from the relevant vote or did not take part in it." [4,5]

Certain General Assembly resolutions may be recognized as "declaratory," but no more. Among Schwebel's conclusions:

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Eli E. Hertz

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represented in the General Assembly, including major States that are not members of a group, such as the United States of America and China.”

Sources:

1 Professor, Judge Stephen M. Schwebel, The Legal Effect of Resolutions and Codes of Conduct

of the United Nations in Justice in International Law, Cambridge University Press, 1994.

Opinions quoted in this critique is not derived from his position as a judge of the ICJ.

2 Cited in Israel and Palestine, Assault on the law of nations, Professor Julius Stone, The Johns Hopkins University Press, 1981. p. 29.

3 Professor Gaetano Arangio-Ruiz “The United Nations declaration on friendly relations and the system of the sources of international law” Publisher: Alphen aan den Rijn, The Netherlands; Germantown, Md.: Sijthoff & Noordhoff, 1979. ISBN: 902860149X.

4 Ibid, p. 40. Professor Julius Stone – another eminent scholar of international law – labeled Ruiz’s work “perhaps the most comprehensive and up-to-date treatise on this matter”.

5 See the Hague Academy of International Law, at: <http://www.ppl.nl/bibliographies/>

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